

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****WESTERN TOOL DISTRIBUTORS PTY LTD
ACN 007 330 145****BACKGROUND**

1. Western Tool Distributors Pty Ltd (ACN 007 330 145) (“Western Tool Distributors”) is incorporated under the Corporations Law and registered in the State of Western Australia.
2. Western Tool Distributors conducts the business of importer, which involves, among other things, the importation of automotive tools and equipment. In August 2002 Western Tool Distributors imported into Australia a batch of 1022 hydraulic trolley jacks (Batch Number 001986) (“the jacks”). The jacks were labelled with the words “Rangier-Wagenheber Vehicle Jack Cric rouleur Gato movil hidraulico Cricchi Tipo idraulico a carello” and were supplied only to Auto One (WA) Pty Ltd and Auto One Distribution (NSW) Pty Ltd, for distribution and supply by retail sale in Auto One stores.
3. The labelling on the packaging and on the jacks themselves indicated that the nominated capacity of the jacks was 1.4 tonnes and 1400kgs respectively. In contradiction to the nominated capacity labelled on the packaging and the jacks themselves, the instructions supplied with the jack indicated that the capacity of the jacks was 2 tonnes.
4. Hydraulic trolley jacks (up to and including those nominated as having a 2.5 tonne capacity) sold in Australia are required to comply with the mandatory consumer product safety standard which is based on Australian /New Zealand Standard AS/NZS 2615:1995 (*hydraulic trolley jacks*) (“the Standard”).

Section 65C of the *Trade Practices Act 1974* (“the Act”) prohibits a company from supplying consumer goods that do not comply with mandatory product safety standards.

5. The Standard aims to reduce the risk of injury and death resulting from the improper use or failure of these products through the establishment of performance requirements and safe usage instructions. It is a supplier’s responsibility to ensure its product complies with the mandatory requirements set down by the Standard. In particular, the Standard prescribes a number of information requirements, including the following:

Clause 7.2.1 of the Standard requires the following to be clearly marked on the packaging of the jack:

- *The 'height lowered' in millimetres, being the minimum height of the head cap;*
- *The 'height raised' in millimetres, being the maximum height of the head cap; and*
- *The nominated capacity stated as 'Safe Working Load...' in kilograms.*

Clause 8(b) of the Standard requires safe usage instructions to be supplied with the jack containing recommendations for the safe usage of the jack, including the following:

- *The jack should be used on a hard level surface and be free to roll;*
- *The unlifted wheels of the vehicle should be chocked;*
- *The load should be centrally located on the head cap;*
- *No person should remain in a vehicle that is being jacked;*
- *The jack should be used for lifting and lowering only; the raised vehicle should be supported on vehicle stands;*
- *No person should get bodily under a vehicle that is supported only by a jack;*
- *The vehicle owner's manual should be consulted prior to the jacking of the vehicle.*

6. Following an investigation by the Australian Competition & Consumer Commission ("the Commission"), the Commission reached the view that Western Tool Distributors, in supplying the jacks to Auto One wholesalers for distribution and supply by retail sale through Auto One stores, had contravened section 65C of the Act, in that the package marking and enclosed instructions did not meet the requirements of the Standard.
7. The Commission raised its concerns about the non-compliance of the jacks with Western Tool Distributors in July 2003. Western Tool Distributors indicated that the non-compliant jacks were from a batch imported in August 2002, and that none of the jacks from that batch remained in its possession.
8. Western Tool Distributors took immediate steps to inform all stores to whom the jacks had been supplied that the jacks did not comply with the Standard, and advised them to remove any remaining stock of those jacks from sale. Western Tool Distributors advised that it would provide to those stores amended instructions and stickers to be placed on the boxes, in order to ensure that the packaging and the instructions complied with the Standard.
9. Western Tool Distributors caused a product safety recall advertisement to be published in The West Australian and The Sydney Morning Herald on Friday 1 August 2003 at its own expense. The advertisement advised readers that the hydraulic trolley jacks in batch number 001986 did not comply with the Standard, and provided the option of a return, exchange, or the provision of new instructions and labelling for any party in possession of a non-compliant jack.

10. Western Tool Distributors acknowledges and admits that its supply of hydraulic trolley jacks described above contravened section 65C of the Act.

COMMENCEMENT OF UNDERTAKINGS

11. This Undertaking comes into effect when:

- a) The Undertaking is executed by Western Tool Distributors; and
- b) The Commission accepts the Undertaking so executed.

UNDERTAKINGS

Western Tool Distributors undertakes to the Commission for the purposes of section 87B of the Act that:

12. It will not in future supply any products that do not fully comply with the relevant mandatory consumer product safety and information standards that may apply to such products.
13. Western Tool Distributors will provide the option to any party in possession of the jacks, of receiving:
 - amended instructions that comply with the Standard, or
 - a replacement of the jack with a new jack that complies with the Standard, or
 - a refund of the purchase price of the jack.

Western Tool Distributors will enter arrangements with retailers such that consumers may return the jack to the place of purchase in order to receive one of the remedies listed above from the place of purchase. Western Tool Distributors will indemnify retailers for any of the above remedies they may provide to consumers.

14. In a period of not more than six months of this Undertaking taking effect, it will design, implement and make provision to maintain and audit, at its own expense, a Trade Practices Compliance Program ("Compliance Program") that is in accordance with the Australian Standard for Compliance Programs AS-3806 relating to those provisions of the Act which are relevant to the conduct of its business but must specifically include sections 52, 53 and 65 of the Act which:
 - (a) demonstrates commitment to a policy of compliance and will encourage a culture of compliance throughout Western Tool Distributors;
 - (b) analyses and responds to the trade practices matter resulting in this Undertaking;
 - (c) identifies risk areas for trade practices contraventions and develops systems to eliminate or minimise these risks; and

(d) provides that Western Tool Distributors will take appropriate action concerning any person within its control who is responsible for contraventions of the Act and will not indemnify any such person from the consequences of suit or settlement in respect of any contravention of the Act.

15. In respect of clause 14 above the Compliance Program will incorporate, among other things, the following elements:

- (a) Implementation of a visible and accessible complaints handling system consistent with Australian Standard AS 4629 when read together with Appendix A to Australian Standard 3806; and
- (b) Introduction of a system to monitor and review the effectiveness of the compliance program.

16. Western Tool Distributors shall cause, at its own expense, an independent audit of its Compliance Program to be conducted:

- A within twelve months of the time at which this Undertaking takes effect;
- B upon each of the first two anniversaries of the time at which this Undertaking takes effect; and
- C on any additional occasions as the auditor determines necessary.

The audit will be conducted by a suitable qualified compliance professional who is independent of Western Tool Distributors and has no conflict of interest or duty in providing audit services to it.

The auditor will review and report in writing on:

- A Western Tool Distributors' adherence to this Undertaking;
- B the particulars of the Compliance Program, its implementation of the Compliance Program and the achievement of its objectives; and
- C any recommended changes to the Compliance Program that may be necessary to ensure achievement of its objectives.

The auditor will provide a copy of the audit report to the Commission within twenty one days of completion of the audit.

If requested by the Commission, Western Tool Distributors will provide forthwith to the Commission:

- A the name of the auditor;
- B the information upon which it relies in determining the auditor is independent from it; and

C information showing whether any recommendations by the auditor have been implemented.

17. Western Tool Distributors will update the Commission, within forty-five (45) days of this Undertaking effect, of its progress in implementing the Compliance Program.

ACKNOWLEDGEMENTS

18. Western Tool Distributors acknowledges that the Commission will make this Undertaking available for public inspection.

19. Western Tool Distributors further acknowledges that the Commission will from time to time publicly refer to this Undertaking.

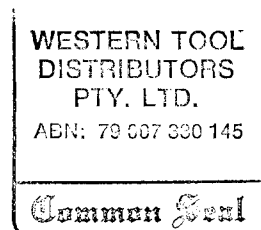
20. Western Tool Distributors further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct.

21. Western Tool Distributors further acknowledges the reports referred to in this Undertaking and the Trade Practices Compliance Program as in force from time to time may be held with this Undertaking on the Public Register.

IN WITNESS of these undertakings and its agreement the Common Seal of Western Tool Distributors Pty Ltd (ACN 007 330 145) was hereunto affixed by authority of its Board of Directors in the presence of:

Director: *M. Cassi*

Director/Secretary: *[Signature]*



DATED this 21 day of AUGUST 2003.

ACCEPTED BY THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

Chairman: *[Signature]*

DATED this 26th day of August 2003.